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RATNER & PRESTIA
Suite 301
One Westlakes, Berwyn
P.O. Box 980
Valley Forge, PA 19482-0980
Phone: (610) 407-0700
Fax: (610) 407-0701

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DATE: January 5, 1998OUR REF NO.: GCC-9060TIME: 2:51 PM

YOUR REF NO.: _____

FROM:	Kevin R. Casey
TO:	Todd E. Zenger, Esquire
COMPANY:	Kirton & McConkie
FAX TELEPHONE:	(801) 321-4893
OFFICE TELEPHONE:	(801) 321-4877
TITLE OF DOCUMENT:	Letter and Draft APMR

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COMMENTS:

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January 5, 1998

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Todd E. Zenger, Esquire
Kirton & McConkie
1800 Eagle Gate Tower
60 East South Temple
P.O. Box 45120
Salt Lake City, UT 84145-0120

Amicus
WR 4083

Re: Utah Medical Products, Inc. v.
Graphic Controls Corporation
Civil Action No. 2:97CV 0427S (D. Utah)
Your Ref.: 7218.0002; Our Ref.: GCC-9060

Dear Todd:

I received, with thanks, your telephone message earlier today. I understand that we are scheduled for a telephone scheduling conference at 1 p.m. my time on Thursday, January 8, 1998, and plan to attend. Please arrange the logistics of the call; I expect to take the lead representing our client during the call (with your able assistance, of course).

Enclosed is a draft of an Attorney Planning Meeting Report (APMR) outlining my initial preferences (to be discussed with opposing counsel) and posing a few questions. Please give me a call some time before Thursday to coordinate our "game plan" for the conference.

As always, I appreciate your assistance in this matter.

Best regards,

RATNER & PRESTIA

[Signature]
Kevin R. Casey

KRC/kak

Enclosure: Draft APMR

KAK I:\GCC\9060\CORR\TEZKRC04.DOC

Received Time

Jan. 5, 12:59PM

Print Time

Jan. 5, 1:02PM

VALLEY FORGE OFFICE
SUITE 301
ONE WESTLAKES (BERWYN)
P.O. BOX 980
VALLEY FORGE, PA 19482-0980

TELEPHONE (610) 407-0700
FACSIMILE (610) 407-0701

TELEX 846169

CompuServe 75362,1677
intelra@midatlantic.com

PAUL E. PRESTIA
ALLAN RATNER
ANDREW L. NEY
KIMMOTH N. NIXON
KIM R. CASEY
BENJAMIN E. LEACE

ROBERT L. ANDERSEN

LAWRENCE E. ASHBY
CHRISTOPHER R. LEWIS
STEVEN E. KOHS
ALLAN M. WHEATCRAFT
LOUIS W. BEADELL, JR.
JACQUES L. ETROVIC
ERIC A. DIGITIER
IAN HUGHES
RAYMOND L. ADORNATO
*NORTH CAROLINA BAR ONLY

OF COUNSEL
FRANK J. BIRNBAUM

ALLENTOWN OFFICE
SUITE 265
COMMERCE PLAZA II
5100 TILGHMAN STREET
ALLENTOWN, PA 18104

TELEPHONE (610) 530-8100
FACSIMILE (610) 530-8200

JAMES C. SINGH

WILMINGTON OFFICE
SUITE 209, WEBSTER
1411 SILVERSIDE ROAD
P.O. BOX 7228
WILMINGTON, DE 19803

TELEPHONE (302) 479-9470
FACSIMILE (302) 479-9460
KRC@AOL.COM

COSTAS S. KRUMHOLTZ
PAUL E. PRESTIA
*PENNSYLVANIA BAR ONLY

BRUCE M. MONROE, PH.D.

WILLIAM P. HAUSER, PH.D.
REGISTERED PATENT AGENT

Todd E. Zenger, Esq.
KIRTON & MCCONKIE
1800 Eagle Gate Tower
60 East South Temple
Salt Lake City, UT 84111
(801) 328-3600

Kevin R. Casey, Esq.
Paul F. Prestia, Esq.
Allan M. Wheatcraft, Esq.
RATNER & PRESTIA
P.O. Box 980
Valley Forge, PA 19482
(610) 407-0700

Attorneys for Defendant,
GRAPHIC CONTROLS CORPORATION

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UTAH MEDICAL PRODUCTS, INC.
a Utah Corporation,

Plaintiff,

v.

GRAPHIC CONTROLS CORPORATION,
a New York Corporation, and
DOES 1 through 10,

Defendants.

Civil Action No. 2:97CV 0427S

ATTORNEYS' PLANNING
MEETING REPORT (APMR)

APMR

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1. ATTORNEYS' MEETING: Pursuant to Fed. R. Civ. P. 26(f), a telephone meeting was held on January 8, 1998.

a. The following were in attendance: Todd E. Zenger, Esq. of Kirton & McConkie and Kevin R. Casey, Esq. of Ratner & Prestia for the defendant, Graphic Controls Corporation, and Stephen B. Mitchell and xxx of Burbridge & Mitchell for the plaintiff, Utah Medical Products, Inc. Defendants DOES 1-10 were not represented; therefore, "party" means either Graphic Controls Corporation or Utah Medical Products, Inc. and "parties" means those two companies only.

b. The parties have discussed the nature and basis of their claims and defenses. *[Further, the parties agreed that this APMR does not apply to Civil Action No. 96-CV-459E(F) should the decision by the U.S. District Court for the Western District of New York, dismissing that action, be reversed on appeal.]*

2. INITIAL DISCLOSURE: The parties will exchange the information required by Rule 26(a)(1) by *[date agreed upon by parties]*. Each party agrees to identify to the other any additional information believed to be required under Rule 26(a)(1) but not produced by *[earlier identified date, and new agreed upon date by parties; this information should include identification by UTMD of the precise claims of the '822 patent which it alleges are infringed]*. Each party will mark and number each page of all documents produced by that party. Further, each party will have the right to review originals of any documents produced upon request to the producing party, if the producing party has an original.

APMR

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3. **DISCOVERY PLAN:** The parties jointly propose to the court the following discovery plan. The parties do not agree, however, on a discovery schedule (see Subparagraph "b" below).

a. Discovery may be necessary on the following subjects:

- (1) Graphic Controls' alleged infringement, direct and induced, of UTMD's U.S. Patent No. 4,785,822;
- (2) Validity and enforceability of UTMD's patent;
- (3) Alleged willfulness of GCC's infringement;
- (4) Unfair competition claims under the common law and under the Lanham Act;
- (5) UTMD's marking of its products covered by the '822 patent; &
- (6) Damages (if any).

b. The parties disagree on the date for completion of discovery.

[They may agree that "all discovery will be completed by [8-1-99]". If reports or depositions of retained experts disclose new or additional facts, the discovery deadline may be extended by stipulation of the parties or by court order until [11-1-99].]

c. The following discovery methods will be used: The parties agree to limit interrogatories to *[fifty (50)]* served upon each party by the other party, including subparts, excluding identification of potential witnesses and parties assisting in responding to interrogatories. The parties will have no limit on requests for admission. The parties agree to limit depositions by oral examination to *[fifteen (15)]* each, unless otherwise agreed. Each deposition is limited to a maximum of *[eight (8) hours]*; counsel may mutually agree to modify this limitation if circumstances so warrant. The parties also anticipate using requests for production of documents.

d. The parties' lists of retained experts due under Rule 26(a)(2) with their areas of expertise and expected testimony will be provided to the other party

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[*thirty (30) days*] before close of discovery. The parties shall agree to the exchange of expert reports and the depositions of the experts.

e. Supplementations under Fed. R. Civ. P. 26(e) are due [*fourteen (14) days*] before the close of discovery.

f. GCC shall give the notice required by 35 U.S.C. § 282 on or before [*date 30 days before trial per statute*].

4. OTHER ITEMS: [*many of these items require resolution of the discovery cut-off date before they can be completed; the parties may request a conference with the court before entry of the scheduling order*]:

- a. The parties request a final pretrial conference
[*30 days before trial*].
- b. The cutoff date for joining additional parties is [*October 1, 1998*].
- c. The cutoff date for amending pleadings is [*October 1, 1998*].
- d. The cutoff date for filing dispositive or potentially dispositive motions is [*October 1, 1998*].
- e. The parties have discussed settlement and thus far have been unable to agree to any terms [*find out what UTMD seeks*].
- f. The potential for resolution of this matter through settlement or through the courts' alternative dispute program is believed to be [*poor*] at this time.
- g. Final lists of witnesses and exhibits pursuant to Fed. R. Civ. P. 26(a)(3) are due [*ten (10)*] days before the court's pretrial conference.
- h. The parties shall have [*ten (10)*] days after service of final lists of witnesses and exhibits to list objections under Rule 26(a)(3).
- i. This case should be ready for trial by [*December 1999*].
- j. The estimated length of trial is seven (7) days.

APMR

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k. *Trial by Magistrate Judge? GCC would rather have MJ.*

1. *Number of jurors? Todd, rules on unanimity?*

DATED this day of _____ January, 1998.

Respectfully submitted,

Todd E. Zenger, Esq.
Kirtan & McConkie
1800 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111
(801) 328-3600

Kevin R. Casey
Paul F. Prestia
Allan M. Wheatcraft
RATNER & PRESTIA
Suite 301, Westlakes One, Berwyn
P.O. Box 980
Valley Forge, PA 19482
(610) 407-0700

Attorneys for Defendant,
Graphic Controls Corporation

Stephen B. Mitchell
Burbridge & Mitchell
139 E. South Temple, Suite 2001
Salt Lake City, Utah 84111
(801) 355-6677
Attorneys for Plaintiff,
Utah Medical Products, Inc.